LKP & Anor v Pendaftar Besar Kelahiran dan Kematian, Malaysia

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24–25–08 OF 2019
FAIZAH JAMALUDIN J
31 JANUARY 2023

Citizenship — Operation of law, by — Declaration — Whether child qualified to be Malaysian citizen by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of Second Schedule of Federal Constitution since fact that she was registered as citizen in her birth certificate for first 12 years after her birth meant she could not have acquired citizenship of any other country within one year after her birth

The plaintiffs were a Malaysian husband and wife who were also the joint litigation representatives and adoptive parents of a child ('LSY'). In their instant originating summons ('OS'), the plaintiffs prayed for, inter alia, declaratory orders that: (1) LSY was born to a mother who was a permanent resident in Malaysia pursuant to s 19B of Part III of the Second Schedule of the Federal Constitution ('the FC'); (2) LSY was a Malaysian citizen by operation of law pursuant to art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC read with s 19B of Part III of the Second Schedule of the FC; (3) alternatively, LSY was a Malaysian citizen by operation of law by virtue of her lawful adoption by the plaintiffs pursuant to the adoption order issued by the sessions court read with ss 9 and 25A of the Adoption Act 1952 ('AA') and art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC; and (4) LSY was a Malaysian citizen by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of the Second Schedule of the FC. The plaintiffs sought a consequential order that the defendant reissue a birth certificate to LSY stating that she was a Malaysian citizen. Originally, the defendant had registered LSY, born on 3 July 2003 at a maternity centre in Selangor, as a citizen in her birth certificate after the first plaintiff wrongly informed the defendant that she was his and his wife's biological child. The first plaintiff had, in fact, taken LSY shortly after her birth from a woman who allegedly told the first plaintiff that LSY's biological parents did not want her and had 'given her away'. It was only when LSY applied for a national identity card when she was 12 years old did the defendant discover that the plaintiffs were not her biological parents. The defendant then amended LSY's birth certificate to state that the particulars of her biological parents were unknown and that she was not a citizen. Following that amendment, the plaintiffs successfully applied to the sessions court to adopt LSY under the AA. Following upon the grant of the adoption order, the defendant issued a new birth certificate to LSY naming the plaintiffs as her

parents but maintaining her non-citizen status. Prior to the filing of the instant OS, the plaintiffs had applied to the Federal Government for citizenship to be granted to LSY under art 15A of the FC but the application was rejected.

Held, declaring that LSY was a Malaysian citizen by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of the Second Schedule of the Federal Constitution ('the FC') and ordering the defendant to reissue LSY's birth certificate to state that she was a citizen:

(1) It was not disputed that LSY was born within the Federation after Malaysia Day and was originally registered as a Malaysian citizen by the defendant based on false information provided by the first plaintiff that LSY was the biological child of the plaintiffs. However, when it was discovered that LSY was not the plaintiffs' biological child, the defendant amended LSY's original birth certificate to state that she was not a citizen (see paras 14 & 55–56).

(2) The fact that LSY was registered by the defendant after her birth as a Malaysian citizen, albeit based on false information provided by the first plaintiff, meant that it would have been legally impossible for her to have acquired within one year after her birth, the citizenship of any other country by virtue of any provision corresponding to s 1(c) of Part II of the Second Schedule of the FC or otherwise. Therefore, this court found that LSY, who was a Malaysian citizen since her birth until it was revoked by the defendant when she was 12 years old, could not have acquired and did not acquire the citizenship of any other country within one year from her birth. Thus, she was a Malaysian citizen by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of the Second Schedule of the FC. The plaintiffs were therefore entitled to be granted the declaration sought in prayer (4) in the instant OS (see paras 58–59).

LSY did not qualify for Malaysian citizenship by operation of law under prayers (1), (2) and (3) of the instant OS because:

(3) The facts did not show that LSY was found abandoned at birth or that she was a 'newborn child found exposed' at the Puchong Maternity Centre. Under s 19B of Part III of the Second Schedule of the FC, unless the contrary was shown, any newborn child found exposed in any place shall be presumed to have been born to a mother who was permanently resident at that place. Since LSY was not an abandoned child at birth, it followed that the presumption under s 19B of Part III of the Second Schedule of the FC that she was born to a mother who was permanently resident in Malaysia did not operate. Since the plaintiffs had failed to prove that LSY was born to a mother who was permanently resident in Malaysia the declarations sought in prayers (1) and (2) of the OS could not be granted (see paras 17, 23 & 34–39).

(4) The majority of the Federal Court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 held that for the purposes of art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC, the word 'parents' meant the child's parents at the time of his/her birth. This therefore excluded, for the purposes of citizenship, the plaintiffs who were LSY's adoptive, and not natural, parents. As such, the declaration sought in alternative prayer (3) in the instant OS could not be granted (see paras 44–53).

[Bahasa Malaysia summary

Plaintif adalah suami isteri warganegara Malaysia yang juga wakil litigasi bersama dan ibu bapa angkat seorang anak ('LSY'). Dalam saman pemula semasa ('OS') mereka, plaintif memohon untuk, antara lain, perintah deklarasi bahawa: (1) LSY dilahirkan kepada seorang ibu yang merupakan pemastautin tetap di Malaysia menurut s 19B Bahagian III Jadual Kedua Perlembagaan Persekutuan ('PP'); (2) LSY adalah warganegara Malaysia melalui kuatkuasa undang-undang menurut perkara 14(1)(b) dan s 1(a) Bahagian II Jadual Kedua PP yang dibaca dengan s 19B Bahagian III Jadual Kedua PP; and (3) secara alternatif, LSY adalah warganegara Malaysia melalui kuatkuasa undang-undang berdasarkan pengambilannya sebagai anak angkat yang sah oleh plaintif menurut perintah pengangkatan yang dikeluarkan oleh mahkamah sesyen yang dibacakan dengan ss 9 dan 25A Akta Pengangkatan 1952 ('AP') dan perkara 14(1)(b) dan s 1(a) Bahagian II Jadual Kedua PP; (4) LSY adalah warganegara Malaysia melalui kuatkuasa undang-undang menurut perkara 14 (1)(b) dan ss 1(e) dan 2(3) Bahagian II Jadual Kedua PP. Plaintif memohon perintah lanjutan supaya defendan mengeluarkan semula sijil kelahiran kepada LSY yang menyatakan bahawa beliau adalah warganegara Malaysia. Pada asalnya, defendan telah mendaftarkan LSY, dilahirkan pada 3 Julai 2003 di sebuah pusat bersalin di Selangor, sebagai warganegara dalam sijil kelahirannya selepas plaintif pertama secara salah memaklumkan defendan bahawa beliau adalah anak kandungnya dan isterinya. Plaintif pertama, sebenarnya, telah mengambil LSY sejurus selepas kelahirannya daripada seorang wanita yang didakwa memberitahu plaintif pertama bahawa ibu bapa kandung LSY tidak menginginkannya dan telah 'memberikannya'. Hanya apabila LSY memohon kad pengenalan kebangsaan ketika beliau berumur 12 tahun, defendan mendapati bahawa plaintif bukan ibu bapa kandungnya. Defendan kemudiannya meminda sijil kelahiran LSY untuk menyatakan bahawa butir-butir ibu bapa kandungnya tidak diketahui dan beliau bukan warganegara. Berikutan pindaan tersebut, plaintif berjaya memohon kepada mahkamah sesyen untuk mengangkat LSY di bawah AP. Berikutan pemberian perintah pengangkatan, defendan mengeluarkan sijil kelahiran baharu kepada LSY yang menamakan plaintif sebagai ibu bapanya tetapi mengekalkan status bukan warganegaranya. Sebelum pemfailan OS semasa, plaintif telah memohon kepada Kerajaan Persekutuan agar kerakyatan diberikan kepada LSY di bawah perkara 15A PP tetapi permohonan tersebut ditolak.

Diputuskan, memberikan deklarasi bahawa LSY adalah warganegara Malaysia melalui kuatkuasa undang-undang menurut perkara 14(1)(b) dan ss 1(e) dan 2(3) Bahagian II Jadual Kedua Perlembagaan Persekutuan ('PP') dan memerintahkan defendan untuk mengeluarkan semula sijil kelahiran LSY untuk menyatakan bahawa beliau adalah warganegara:

(1) Ia tidak dipertikaikan bahawa LSY dilahirkan di dalam Persekutuan selepas Hari Malaysia dan pada asalnya didaftarkan sebagai warganegara Malaysia oleh defendan berdasarkan maklumat palsu yang diberikan oleh plaintif pertama bahawa LSY adalah anak kandung plaintif. Bagaimanapun, apabila ianya didapati bahawa LSY bukanlah anak kandung plaintif, defendan meminda sijil kelahiran asal LSY untuk menyatakan bahawa beliau bukan warganegara (lihat perenggan 14 & 55–56).

(2) Hakikat bahawa LSY telah didaftarkan oleh defendan selepas kelahirannya sebagai warganegara Malaysia, walaupun berdasarkan maklumat palsu yang diberikan oleh plaintif pertama, bermakna ia adalah mustahil dari segi undang-undang untuk beliau memperolehnya dalam tempoh satu tahun selepas kelahirannya, kewarganegaraan mana-mana negara lain berdasarkan mana-mana peruntukan yang sepadan dengan s 1(c) Bahagian II Jadual Kedua PP atau sebaliknya. Oleh itu, Mahkamah ini mendapati bahawa LSY, yang merupakan warganegara Malaysia sejak kelahirannya sehingga ia dibatalkan oleh defendan ketika berumur 12 tahun, tidak boleh memperoleh dan tidak memperoleh kewarganegaraan mana-mana negara lain dalam tempoh satu tahun dari kelahirannya. Oleh itu, beliau adalah warganegara Malaysia mengikut kuatkuasa undang-undang menurut perkara 14(1)(b) dan ss 1(e) dan 2(3) Bahagian II Jadual Kedua PP. Oleh itu, plaintif berhak untuk diberikan deklarasi yang diminta dalam permohonan (4) dalam OS semasa (lihat perenggan 58–59).

LSY tidak layak mendapat kewarganegaraan Malaysia melalui penguatkuasaan undang-undang di bawah permohonan (1), (2) dan (3) OS semasa kerana:

(3) Fakta tidak menunjukkan bahawa LSY ditemui terbiar semasa dilahirkan atau beliau adalah 'anak yang baru lahir didapati terdedah' di Pusat Bersalin Puchong. Di bawah s 19B Bahagian III Jadual Kedua PP, melainkan jika sebaliknya ditunjukkan, mana-mana anak yang baru lahir yang didapati terdedah di mana-mana tempat hendaklah dianggap telah dilahirkan oleh seorang ibu yang bermastautin tetap di tempat tersebut. Memandangkan LSY bukan anak terbiar semasa lahir, ia berikutan anggapan di bawah s 19B Bahagian III Jadual Kedua PP bahawa beliau dilahirkan oleh seorang ibu yang bermastautin tetap di Malaysia tidak terpakai. Memandangkan plaintif gagal membuktikan bahawa LSY

dilahirkan oleh seorang ibu yang bermastautin tetap di Malaysia, deklarasi yang diminta dalam permohonan (1) dan (2) OS tidak dapat dibenarkan (lihat perenggan 17, 23 & 34–39) .

(4) Majoriti Mahkamah Persekutuan dalam *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 memutuskan bahawa bagi maksud perkara 14(1)(b) dan s 1(a) Bahagian II Jadual Kedua PP, perkataan 'ibu bapa' bermaksud ibu bapa kanak-kanak tersebut pada masa kelahirannya. Oleh itu, ini dikecualiakn, untuk tujuan kewarganegaraan, plaintif yang merupakan ibu bapa angkat LSY, dan bukan ibu bapa semula jadi. Oleh itu, deklarasi yang diminta dalam permohonan alternatif (3) dalam OS semasa tidak dapat dibenarkan (lihat perenggan 44–53).]

Cases referred to

CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia [2022] 1 MLJ 71; [2022] 1 CLJ 1; [2022] 1 AMR 1, FC (refd)

CCH & Anor v Pendaftar Besar Kelahiran dan Kematian Malaysia [2019] 1 LNS 1463, HC (refd)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 4 MLJ 236; [2021] 6 CLJ 471; [2021] 5 AMR 661, FC (refd)

Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors [2018] 1 MLJ 307; [2018] 4 CLJ 758; [2017] 8 AMR 436, CA (refd)

Samuel Duraisingh & Anor v Pendaftar Besar Kelahiran dan Kematian, Malaysia and another appeal [2019] MLJU 1688; [2019] 7 AMR 482; [2019] 1 LNS 1474, HC (refd)

Syed Abu Bakar bin Ahmad v PP [1984] 2 MLJ 19; [1984] 1 CLJ 80, FC (refd)

Tenaga Nasional Bhd v Panareno Sdn Bhd (Vital Projects Sdn Bhd, third party and Semantra No-Dig Engineering Sdn Bhd, fourth party) [2019] 11 MLJ 795; [2019] 4 CLJ 239, HC (refd)

Legislation referred to

Adoption Act 1952 ss 9, 9(1), (2), (3), (4), (5), (6), (7), (8), (9), 25A, 25A(2), Second Schedule

Births and Deaths Registration Act 1957 s 37B

Courts of Judicature Act 1964 s 15(2)

Evidence Act 1950 ss 45, 79, 101, 102

Federal Constitution arts 14(1)(b), 15A, Second Schedule, Part II, ss 1(1)(a), (1)(e), 2(3), Part III, s 19B

Eric Toh Kah Yung (with Wong Chee) (Mah Weng Kwai & Assoc) for the plaintiff.
Krishna Priya a/p Veenagopal @Venugopal (Federal Counsel, Attorney General's Chambers) for the defendant.

Faizah Jamaludin J:

APPLICATION

[1] The first and second plaintiffs are the joint litigation representatives and the adoptive parents of the child ('LSY'). They seek from this court judgment that LSY is a Malaysian citizen by operation of law. In this judgment, the plaintiffs and the child are referred to by their acronyms and details of the child's birth certificates are redacted pursuant to the discretion conferred on this court by s 15(2) of the Courts of Judicature Act 1964.

[2] The plaintiffs have prayed for the following declaratory orders in their amended originating summons (encl 49):

(a) that LSY is born of a mother who is a permanent resident in Malaysia pursuant to s 19B of Part III of the Second Schedule of the Federal Constitution ('the FC');

(b) that LSY is a citizen of Malaysia by operation of law pursuant to art 14(1)(b) and s 1(1)(a) of Part II of the Second Schedule of the FC read with s 19B of Part III of the Second Schedule of the FC;

(c) in the alternative to paras (a) and (b) above, that LSY is a citizen of Malaysia by operation of law by virtue of her lawful adoption by the plaintiffs pursuant to the adoption order dated 17 June 2018 made by the Shah Alam Sessions Court, read with ss 9 and 25A of the Adoption Act 1952 ('the AA 1952') and art 14(1)(b) and s 1(1)(a) of Part II of the Second Schedule of the FC;

(d) that LSY is a citizen of Malaysia by operation of law pursuant to art 14(1)(b) and ss 1(1)(e) and 2(3) of Part II of the Second Schedule of the FC; and

(e) that LSY's birth certificate (Register No 000XXXX, Serial No 00XXXXA) dated 6 August 2016 signed by the defendant which registers LSY as a non-citizen (*bukan warganegara*) instead of a citizen of Malaysia is an unlawful violation of LSY's rights as a citizen of Malaysia.

[3] The plaintiffs also seek the following consequential orders:

(a) that the defendant reissues the birth certificate (Register No 000XXXX, Serial No 00XXXXA) dated 6 August 2016 and registers LSY as a citizen of Malaysia within 14 days from the date of service of this order on the defendant; and

(b) that the requirement of personal service of this order be dispensed with and that service of this order be effected on the National Registration Department of Malaysia by way of registered post.

SALIENT FACTS

[4] The plaintiffs are Malaysian citizens. They are husband and wife.

[5] The plaintiffs are not LSY's biological parents. LSY was born on 3 July 2003 at Puchong Maternity Centre. The first plaintiff had taken LSY from an Indian lady residing in Kelang shortly after her birth.

[6] Nonetheless, the first plaintiffs had registered LSY at the National Registration Department ('JPN') as the plaintiffs' biological child. Based on the information provided by the first plaintiff, the defendant had issued a birth certificate registration No BEXXXXX under the Births and Deaths Registration Act 1957 ('the BDRA 1957'). The first and second plaintiffs were named as LSY's father and mother respectively on the said birth certificate.

[7] The fact that the plaintiffs are not LSY's biological parents was discovered by the defendant when LSY, at 12 years old, presented herself at JPN during her application for a national identity card. The plaintiffs are ethnically Chinese. LSY has been described as 'dark skinned' in the documents filed in this application.

[8] Following the discovery that the plaintiffs are not LSY's biological parents, the defendant amended LSY's birth certificate where the details of LSY's biological parents were stated as *maklumat tidak diperolehi* (no information obtained) and her nationality as *bukan warganegara* (non-citizen).

[9] Subsequent to the amendment, the plaintiffs applied to the Shah Alam Sessions Court to adopt LSY. The sessions court granted the adoption order on 17 June 2016.

[10] Upon the grant of the adoption order, the defendant issued LSY with a new birth certificate (Register No: 000XXXX, Serial No: 00XXXXA) dated 6 August 2016 under the AA 1952, where the first and second plaintiffs were named as LSY's father and mother respectively and her citizenship status stated as *bukan warganegara* (non-citizen).

[11] The plaintiff then applied to the Federal Government under art 15A of the FC for Malaysian citizenship for LSY. The application was rejected on 18 February 2019.

[12] The identity of LSY's biological parents remains unknown to date. The first plaintiff had stated that the Indian lady had told him that LSY was born to Malaysian Indians at Puchong Maternity Centre. The plaintiff had attempted

to find LSY's biological parents. During LSY's adoption proceedings, the plaintiff had placed an advertisement in the New Straits Times on 30 January 2016, and the plaintiff's solicitors wrote to Private Healthcare Practice Control Group ('CKAPS') under the Ministry of Health seeking information relating to the birth of LSY and/or LSY's biological parents. There has been no reply to the advertisement or from CKAPS.

ANALYSIS AND FINDINGS OF COURT

[13] In accordance with art 14(1)(b) of the FC, every person who is born on or after Malaysia Day and has any of the qualifications specified in Part II of the Second Schedule of the FC is a citizen of Malaysia by operation of law. Article 14(1)(b) of the FC reads:

> 14 Citizenship by operation of law
>
> (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) ...
>
> (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[14] It is not disputed that LSY was born within the Federation after Malaysia Day.

[15] To be a citizen of Malaysia by operation of law, she must have at least one of the qualifications specified in Part II of the Second Schedule of the FC.

Does LSY have any of the qualifications specified in Part II of the Second Schedule of the FC?

[16] For a person born in Malaysia on or after Malaysia Day to be a citizen by operation of law, one of the qualifications is that at least one of his/her parents at the time of birth was either a citizen or permanently resident in Malaysia. Section 1(a) of the Part II of the Second Schedule of the FC states:

> 1 (1) Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> (a) every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation.

Was LSY found abandoned at birth?

[17] Pursuant to s 19B of Part III of the Second Schedule of the FC, unless the contrary is shown, any newborn child found exposed in any place shall be presumed to have been born to a mother who is permanently resident at that place. Section 19B reads:

> 19B. For the purposes of Part I or II of this Schedule any newborn child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there; and if he is treated by virtue of this section as so born, the date of the finding shall be taken to be the date of the birth.

[18] The Federal Court in its recent decision in *CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71; [2022] 1 CLJ 1; [2022] 1 AMR 1 ('CCH') held that once it is shown that a newborn child is found exposed, or abandoned at any place, two things are presumed:

> (i) the child was born to a mother who was permanently resident at the place where the finding was made; and (ii) the date of the finding is taken as the date of the birth.

[19] After the Federal Court's decision in *CCH*, the plaintiffs applied in encl 30 to amend their originating summons to include prayers (1) and (2). In their application the plaintiffs stated that the proposed amendments were necessary and were made in light of the decision of the Federal Court in *CCH*. I allowed their application, and the originating summons was accordingly amended.

[20] In their amended originating summons, the plaintiffs seek to persuade this court that LSY was born and abandoned at Puchong Maternity Centre, and therefore, pursuant to s 1(a) of Part II and s 19B of the Part III of the Second Schedule of the FC, she was born to a mother who is permanently resident in Malaysia.

[21] However, the facts in this case are different from that in *CCH*. It was an accepted fact in *CCH* that the child was an abandoned child. Tengku Maimun Tuan Mat CJ in delivering the judgment of the Federal Court said:

> [55] In the present case, we took pains to emphasise that throughout the course of this case, it has been an accepted fact that the child is an abandoned child who was born in Hospital Universiti Kebangsaan Malaysia, Cheras. This fact was acknowledged in the adoption order and in the third birth certificate.

[22] Since the judicial review of the respondent's decision at the High Court, the facts in *CCH* had consistently been that the child was born and abandoned

at Hospital Universiti Kebangsaan Malaysia, Cheras: see the High Court's judgment in *CCH & Anor v Pendaftar Besar Kelahiran dan Kematian Malaysia* [2019] 1 LNS 1463.

[23] Whereas in this case, it is not an accepted fact that LSY was an abandoned child, ie, that she was a newborn child 'found exposed in any place'.

[24] The plaintiff desires this court to declare that LSY was born of a mother who is permanently resident in Malaysia pursuant to s 19B of Part III of the Second Schedule of the FC. Therefore, under ss 101 and 102 of the Evidence Act 1950, the burden is on the plaintiffs to prove on a balance of probabilities that LSY was an abandoned child — that she was a newborn found exposed at birth at Puchong Maternity Centre.

[25] In the plaintiffs' affidavit in support, the first plaintiff stated that LSY was born at Puchong Maternity Centre on 3 July 2003. This fact was included in the adoption order and LSY's birth certificate issued under the AA 1952. The first plaintiff had averred that he took LSY as a newborn from an Indian lady in Kelang. He said that the Indian lady had informed him that LSY's biological parents are Malaysian Indians and that they did not want her.

[26] However, in contrast to his averment in his affidavit, the first plaintiff in his recorded statement to the Bahagian Siasatan dan Penguatkuasaan, JPN Putrajaya on 7 January 2022, made pursuant to an inquiry by the defendant under s 37B of the BDRA 1957 ('recorded statement'), stated that he had obtained LSY from an elderly Chinese lady known as 'aunty', who lives in Jalan Peel Cochrane near the first plaintiff's uncle's house. He said that the Chinese aunty had brought him to a squatter area in Kelang, Selangor where most of its residents are of Indian descent. The first plaintiff in his recorded statement stated, among others:

> Saya ambil subjek dari area Klang bersama makcik itu ... Saya hanya ambil bayi masa bayi tidak silap saya lahir sahaja keturunan India dari keluarga India Malaysia.

[27] In his recorded statement the first plaintiff further stated that he was informed by the Chinese aunty that LSY was born at Puchong Maternity Centre, that all the paperwork with regards to the registration of LSY's birth was managed by the Chinese aunty, and that he went to JPN Petaling Jaya to register LSY's birth and the Chinese aunty waited for him whilst he did so.

[28] In the plaintiff's *afidavit jawapan tambahan* affirmed on 22 August 2022 (encl 52) filed after this court had allowed the amendment to their originating summons, the first plaintiff stated that when he took custody of the baby, LSY's umbilical cord was still attached to her. He said that because of this,

he believes that LSY was abandoned when she was born at Puchong Maternity Centre.

[29] Under s 45 of the Evidence Act 1950, where a court has to 'form an opinion upon a foreign law or of science or art', it may accept as relevant facts the opinion of an expert ie, a person 'specially skilled in that foreign law, science or art'. Expert evidence is only admissible to furnish the court with scientific or other information, which is likely to be outside the experience and knowledge of the judge: see *Syed Abu Bakar bin Ahmad v Public Prosecutor* [1984] 2 MLJ 19; [1984] 1 CLJ 80 (FC); *Tenaga Nasional Bhd v Panareno Sdn Bhd (Vital Projects Sdn Bhd, third party and Semantra No-Dig Engineering Sdn Bhd, fourth party)* [2019] 11 MLJ 795; [2019] 4 CLJ 239 (HC).

[30] The first plaintiff is not an expert specifically skilled in science or medicine — he is not a medical doctor or a health professional. Nor is he an expert in child welfare.

[31] Accordingly, pursuant to s 45 of the Evidence Act, the first plaintiff's belief, that because LSY's umbilical cord was still attached when he took her, means that she was abandoned, is not a relevant fact and must, therefore, be disregarded by this court in its determination of the facts in this case. Moreover, the first plaintiff's claim that LSY's umbilical cord was still attached when he took her from the Indian lady is a bare averment. The plaintiffs did not provide any evidence to support the first plaintiff's averment. They did not file any affidavits by the Chinese aunty and/or the Indian lady to confirm his said averment.

[32] The second plaintiff in her recorded statement dated 7 January 2022 confirmed that it was the first plaintiff who went with the Chinese aunty to take the baby from Kelang. She said that she did not go with them as she was working. She stated:

> Makcik yang bagitau ada satu bayi berkulit hitam dari keluarga India Malaysia yang tidak mahu bayi yang dilahirkan itu. Dan saya dan suami terima bayi dan tidak kisah apa warna dan keturunan bayi, sebab makcik bagi tahu dari keluarga Malaysia.

[33] The plaintiffs have proven that LSY was born within the Federation of Malaysia at Puchong Maternity Centre on 3 July 2003. This fact is not disputed by the defendant — it is reflected in LSY's birth certificates issued by the defendant under the BDRA 1957 and under the AA 1952 respectively.

[34] Nonetheless, this court finds that the plaintiffs have failed to prove on a balance of probabilities that LSY was abandoned at birth. In my considered

judgment, for the reasons discussed above, the first plaintiff's averment that the Indian lady from whom he took LSY in Kelang informed him that LSY was born at Puchong Maternity Centre to Indian Malaysians or that LSY's umbilical cord was attached when he took her, does not prove on a balance of probabilities that LSY was an abandoned at birth or that she was a 'newborn child found exposed' at Puchong Maternity Centre.

[35] Accordingly, this court finds that LSY does not fall within s 19B of Part III of the Second Schedule of the FC.

Was LSY born to a mother permanently resident in Malaysia?

[36] As this court has found that LSY was not an abandoned child at birth, it follows, that the presumption under s 19B of Part III of the Second Schedule of the FC that LSY was born to a mother permanently resident in Malaysia cannot be made.

[37] Therefore, this court finds that the plaintiffs have failed to prove that LSY was born to a mother permanently resident in Malaysia.

[38] Based on these findings, this court cannot make a declaration that LSY was born to a mother who is permanently resident in Malaysia pursuant to s 19B of Part III of the Second Schedule of the FC. This court also cannot make a declaration that LSY is a citizen of Malaysia pursuant to art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC read with s 19B of Part III of the Second Schedule of the FC.

[39] Accordingly, the prayers (1) and (2) of encl 49 are dismissed.

Is LSY a citizen of Malaysia by operation of law by virtue of her lawful adoption under the adoption order made by the sessions court?

[40] The plaintiffs' case, in the alternative, is that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to the adoption order read with ss 9 and 25A of the AA 1952 and art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC.

[41] Learned counsel for the plaintiffs, Mr Eric Toh, argues that LSY's birth certificate issued by the defendant under the AA 1952 (referred to the plaintiff's written submission as 'post-adoption birth certificate') is sufficient to support a prima facie case that LSY was born in Malaysia and was not born a citizen of any other country within one year from 3 July 2003.

[42] Mr Toh sought to persuade this court that the word 'parent' in s 1(a) of

Part II of the Second Schedule of the FC includes the plaintiffs who are LSY's lawful and adoptive parents as stated in her post-adoption birth certificate pursuant to s 25 of the AA 1952. He submitted that LSY's post-adoption birth certificate is conclusive proof and conclusive evidence that LSY was born in Malaysia and that the plaintiffs are her parents for all purposes. Mr Toh relied on the Court of Appeal's decision in *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors* [2018] 1 MLJ 307; [2018] 4 CLJ 758; [2017] 8 AMR 436 ('Madhuvita') as authority to support his argument.

[43] At the time the plaintiffs filed their written submissions in September 2020, *Madhuvita* was still good law. However, the Federal Court in its majority decision in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236; [2021] 6 CLJ 471; [2021] 5 AMR 661 ('CTEB') delivered in May 2021, rejected the proposition made by the Court of Appeal in *Madhuvita* that the legitimacy of the child is to be considered at the time of the application for citizenship and not at birth. Rohana Yusof PCA, delivering the Federal Court's majority decision stated:

> [68] With respect, I am not in agreement with *Madhuvita* in relation to the finding that the legitimacy or otherwise of a child is to be considered at the time of the application.

[44] The Federal Court in its majority decision in *CTEB* held that for purposes of art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC, the word 'parents' means the child's parents at the time of birth.

[45] As *Madhuvita* is no longer good law, the question of who is LSY's parents must be considered at her birth, and not after her legal adoption by the plaintiffs or during this application.

[46] The Federal Court in *CTEB* had referred to *Samuel Duraisingh & Anor v Pendaftar Besar Kelahiran dan Kematian, Malaysia and another appeal* [2019] MLJU 1688; [2019] 7 AMR 482; [2019] 1 LNS 1474 (HC) ('Samuel Duraisingh') — a case in which I had occasion to consider whether two adopted children are citizens of Malaysia by operation of law under the FC by reason of their adoption. The adoptive parents in *Samuel Duraisingh* had similarly argued that the children were citizens of Malaysia by virtue of their birth in Malaysia pursuant to the adoption orders made by the sessions court read with ss 9 and 25A of the AA 1952 and art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC.

[47] A post-adoption birth certificate is issued by the defendant after the adoption of a child under the AA 1952. The certificate does not state who the child's parents are at his birth. Instead, it states who are the adopted parents of

the child: see s 25A(2) and the Second Schedule of the AA 1952. As I had held in my judgment in *Samuel Duraisingh*:

> [56] The AA 1952 and the BDRA 1957 are two separate and distinct statutes. The AA 1952 regulates the registration of entries in the *Adoption Children Register* as directed in adoption orders issued by the High Court or the sessions court. The defendant establishes and maintains the *Adoption Children Register* and *the Register of Birth Certificates* under the AA 1952. Section 25A(2) states that the defendant is to issue a birth certificate in respect of a child in the form set out in the Second Schedule of the AA 1952 upon application of an adoptive parent or both adoptive parents and upon payment of a fee.
>
> [57] Whereas the BDRA 1957 governs, among others, the entry of the birth of a child in the *Register of Births, Deaths and Presumed Deaths* kept and maintained by the defendant under the BDRA 1957. A birth certificate issued under the BDRA 1957 is a certificate of birth given by the defendant to the informant at the time of registration of the child's birth.
>
> [58] Accordingly, for these reasons, I respectfully disagree with the plaintiffs' contention that once a pre-adoption birth certificate issued under the BDRA 1957 has been surrendered and a post-adoption birth certificate issued under the AA 1952, s 33(1) of the BDRA 1957 refers to the same post-adoption birth certificate issued under the AA 1952.

[48] For the above reasons and the Federal Court's majority decision in *CTEB*, I find in this instant case (as I did in *Samuel Duraisingh*) that the presumption of genuineness under s 79 of the Evidence Act does not amount to conclusive proof that 'parents' on a post-adoption birth certificate issued under the AA 1952 are 'parents' for the purposes of art 14(1)(b) and s 1(a) Second Schedule of the FC. I had held in *Samuel Duraisingh*:

> [64] Both the provisions in s 33(1) of the BDRA 1957 and s 25A(6) of the AA 1952 dovetails with s 79 of the Evidence Act 1950. The function and purpose of the provisions in s 33(1) of the BDRA 1957 and s 25A(6) of the AA 1952 is to enable the courts, pursuant to s 79 of the Evidence Act 1950, to presume that birth certificates and copies of birth certificates duly certified by the defendant are genuine and admit them as evidence without having to call the maker of the certificates.

[49] As for the plaintiffs argument that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to s 9 of the AA 1952 read together with s 25A of the Act and art 14(1)(b) and s 1(a) of Part II of the Second Schedule of the FC, I find that s 9 of the AA 1952 does not construe or deem an adopted child as a child born to the adopter in lawful wedlock for purposes of art 14(1)(b) and s 1(a) of Part II of the Second Schedule, Part II of the FC.

[50] In *Samuel Duraisingh*, after having thoroughly analysed sub-ss (1)–(9) of s 9 of the AA 1952, I had concluded:

[77] Applying the rule *ejusdem generis* to the interpretation of s 9 of the AA 1952, the general words in sub-ss 9(1) to (9) of the AA 1952 on the effect of an adoption, should be confined to things of the same kind, ie the rights, duties, obligations and liabilities of the biological parents and the adoptive parents vis a vis the adopted child's future custody, maintenance and education; the rights of the courts to make orders of maintenance, custody and access of the adopted child; the devolution of movable and immovable property following the death of the adopter or the adopted child; the disposition of movable and immovable property made inter vivos or by will; the prohibited degree of consanguinity between the adopted child and the adopter and his other children, and situations where the adopter or adopted child dies as a result of an actionable wrong.

[78] Therefore, I find that based on the rule *ejusdem generis*, *it would be wrong for this court to expand the interpretation of the words in s 9 of the AA 1952 to construe or deem an adopted child as the child of the adopter born in lawful wedlock for purposes of its citizenship under Chapter III of the Federal Constitution.*

...

[80] In my view, the rule *expressio unius est exclusio alterius* applies to the interpretation of s 9 of the AA 1952. On the natural and ordinary reading of the subsections in s 9, I find that s 9 confines the construing and deeming of the adopted child to be 'born in lawful wedlock' of the adoptive parents to three situations only, namely:

(i) the devolution of movable and immovable property following the death of the adopter or the adopted child or any other person;

(ii) the disposition of movable and immovable property made inter vivos or by will (including codicil); and

(iii) the death of the adopter or the adopted child as a result of an actionable wrong.

[81] Section 9 of the AA 1952 does not expressly construe or deem an adopted child to be born to the adopter in lawful wedlock for purposes of the adopted child's citizenship under any written law. *Hence, I find that pursuant to the rule expressio unius est exclusio alterius, the effect of the adoption order and the post-adoption birth certificate issued under the AA 1952 does not include construing or deeming the adopted child to be born in lawful wedlock of the adoptive parents for purposes of citizenship under the Federal Constitution.* (Emphasis added.)

[51] The plaintiffs in *Samuel Duraisingh* did not appeal against the decision and neither have the Court of Appeal or the Federal Court in subsequent citizenship appeals before them, including in *CTEB*, held that the decision was wrong. Therefore, the decision in *Samuel Duraisingh* as regards adopted children and post-adoption birth certificates issued under the AA 1952 by the defendant in respect of legally adopted children for purposes of determining the children's citizenship under the FC is still good law.

[52] For these reasons, this court does not find that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to the adoption order read with ss 9 and 25A of the AA 1952 and Article 14(1)(b) and s 1(a) of Part II of the FC.

[53] Accordingly, the plaintiffs' prayer (3) of encl 49 is dismissed.

Is LSY a citizen by operation of law pursuant to art 14(1)(b) of ss 1(e) and 2(3) of Part II of the Second Schedule of the FC?

[54] Sections 1(e) and 2(3) of Part II of the Second Schedule of the FC reads:

> 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> (e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.
>
> ...
>
> 2 (3) For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provision corresponding to paragraph (c) of that section or otherwise.

[55] LSY was born after Malaysia Day. She was registered as a Malaysian citizen by the defendant in the register under the BDRA 1957 based on false information provided by the first plaintiff that LSY was the plaintiffs' biological child. The defendant had issued LSY a birth certificate under the BRDA 1957, which stated that she is a *warganegara* (citizen).

[56] After the truth came to light, when LSY was 12 years old, that she is not the plaintiffs' biological child, the defendant amended LSY's original birth certificate to state that LSY was *bukan warganegara* (non-citizen).

[57] By reason of the amendment of her citizenship status as *bukan warganegara*, LSY is now no longer a citizen of Malaysia.

[58] The fact that she was registered by the defendant after her birth as a Malaysian citizen, albeit based on false information provided by the first plaintiff, means that it would have been legally impossible for her, to have acquired within one year after her birth, the citizenship of any other country by virtue of any provision corresponding to s 1(c) of Part II of the Second Schedule of the FC or otherwise.

[59] Therefore, I find that LSY, who was a Malaysian citizen since her birth until it was revoked by the defendant when she was 12 years old, could not have acquired and did not acquire the citizenship of any other country within one

year from her birth. Thus, she is a citizen of Malaysia by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of the Second Schedule of the FC.

DECISION

[60] Accordingly, this court hereby declares that LSY is a citizen of Malaysia by operation of law pursuant to art 14(1)(b) and ss 1(e) and 2(3) of Part II of the Second Schedule of the FC.

[61] It is hereby ordered that the defendant registers LSY as a citizen of Malaysia and reissues her birth certificate (Register No 000XXXX, Serial No 00XXXXA) dated 6 August 2016 stating that her citizenship status on the birth certificate as 'Warganegara' within 14 days from the date of service of this order on the defendant.

[62] It is further ordered that the requirement of personal service of this order is dispensed with, and that service of this order be effected on the National Registration Department of Malaysia by way of registered post.

[63] There is no order as to costs.

LSY declared a Malaysian citizen by operation of law and defendant ordered to reissue LSY's birth certificate to state that she was a citizen.

Reported by Ashok Kumar